Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of SHAREHOLDERS OF CITICASTERS, INC. (Transferor) and JACOR COMMUNICATIONS, INC. (Transferee) For Transfer of Control of Citicasters Co., Licensee of WTSP(TV), St. Petersburg, Florida WKRC-TV, Cincinnati, Ohio WKLS(FM), Atlanta, Georgia KKCW(FM), Beaverton, Oregon WKRQ(FM), Cincinnati, Ohio WWNK(FM), Cincinnati, Ohio WXTB(FM), Clearwater, Florida WTVN(AM), Columbus, Ohio WLVQ(FM), Columbus, Ohio WDAF(AM), Kansas City, Missouri KYYS(FM), Kansas City, Missouri WLOH(AM), Lancaster, Ohio WHOK-FM, Lancaster, Ohio WTBT(FM), New Port Richey, Florida KEX(AM), Portland, Oregon KKRZ(FM), Portland, Oregon KRXQ(FM), Roseville, California KSEG(FM), Sacramento, California KSLX(FM), Scottsdale, Arizona KOPA(AM), Scottsdale, Arizona WLLD(FM), Upper Arlington, Ohio W27AT, Columbus, Ohio	File Nos. BTC, BTCH, BTCCT - 960222IA through 960222IV

MEMORANDUM OPINION AND ORDER

Adopted: September 17, 1996 **Released: September 17, 1996**

By the Commission: Commissioner Quello concurring in part and issuing a statement at a later date; Commissioner Ness issuing a statement; Commissioner Chong dissenting in part and issuing a statement.

1. The Commission has before it the above-captioned unopposed[1] applications seeking consent to the transfer of control of Citicasters Co. (Citicasters) from the shareholders of Citicasters, Inc. to Jacor Communications, Inc. (Jacor). Currently, Citicasters is the licensee of two television, 5 AM radio stations, and 14 FM radio stations. Jacor, through several of its subsidiaries, is the ultimate licensee of 13 AM radio stations, and 18 FM radio stations.[2] Pursuant to their Agreement and Plan of Merger, upon consummation of this transfer Citicasters, Inc., the parent of Citicasters, will become a wholly-owned subsidiary of Jacor.

2. The proposed merger would create radio-television ownership combinations in two markets which would violate our one-to-a-market rule. 47 C.F.R. §73.3555(c). In the Tampa-St. Petersburg-Sarasota market Jacor presently owns WFLA(AM) Tampa, WFLZ-FM Tampa, and WDUV(FM) Bradenton, and seeks to acquire Citicaster's WTSP(TV) (CBS, Channel 10) St. Petersburg, WXTB(FM) Clearwater, and WTBT(FM), New Port Richey. In the Cincinnati market, Jacor presently owns WLW(AM), WCKY(AM), WEBN(FM), and WOFX(FM), and seeks to acquire Citicaster's WKRC-TV (ABC, Channel 12), WKRQ(FM), and WWNK-FM. Accordingly, Jacor seeks, with one exception, permanent waivers to allow common ownership of these stations in the Tampa-St. Petersburg-Sarasota and Cincinnati markets. As to one station, WKRQ(FM), Jacor seeks a temporary, 12-month waiver of the one-to-a-market rule to permit it to divest that station pursuant to an agreement with the Department of Justice.[3] Alternatively,

[1] On July 23, 1996, the American Association of Advertising Agencies (AAAA), the trade association of the advertising agency business, submitted a letter to Chairman Reed Hundt about pending broadcast mergers. While the AAAA expressed its concern about these mergers, including the instant transfer, and the market power that may be held by Jacor as a result of approval of its one-to-a-market requests, it noted that it does not request that the Jacor transaction be denied. Rather, it maintains that because "the common wisdom in the professional media and advertising buying communities" is that advertising rates increase in markets with concentrated ownership and control, the FCC should develop effective safeguards, including the imposition of appropriate conditions, to prevent this from occurring. With respect to the instant merger, however, the AAAA notes that given Jacor's representations that it will continue to operate all stations with distinct sales staffs, "explicit conditions may not be required in the Jacor application grants."

[2] In its initial application, Jacor indicated that it controlled 9 AM stations and 12 FM stations. Since that time, however, it has consummated the acquisition of several additional stations, and the sale of three stations. One of the three sold stations, WBRD(AM), Palmetto, Florida, which was assigned from a subsidiary of Jacor to Metropolitan Radio Group, Inc., File No. BAL-960405EB, was originally one of the stations involved in Jacor's one-to-a-market waiver request for the Tampa-St. Petersburg-Sarasota market, discussed below.

[3] Pursuant to an agreement with the Department of Justice, Jacor, *inter alia*, will divest WKRQ(FM) within six months. If not divested within this time, then the Department may ask the court to appoint a trustee who will assume responsibility for finding a purchaser for the station. Proposed Final Judgment in *United States v. Jacor Communications, Inc.*, Case No. C-1-96-757 (S.D. Ohio, filed August 5, 1996), as amended September 16, 1996 (hereinafter DOJ Settlement Agreement). In Jacor's August 5, 1996 amendment discussing the terms of this

Jacor seeks temporary waivers for all stations except WKRQ(FM) for a period ending 12 months after issuance of an Order in the pending rulemaking proceeding which, *inter alia*, considers possible revision or elimination of the one-to-a-market rule. *See Further Notice of Proposed Rulemaking* in MM Docket Nos. 91-221 and 87-8, 10 FCC Rcd 3524 (1995). Under this alternative approach, Jacor continues to seek a temporary 12-month waiver, measured from the date of this decision, in which to divest WKRQ(FM).

3. Because Jacor will control more than one radio station in the same service in various markets after consummation of the proposed merger, Jacor has also submitted showings to demonstrate its compliance with the limitations of our local radio ownership rules in those markets.[4] These limitations, mandated by the Telecommunications Act of 1996, provide strictly numerical restrictions on the number of radio stations in the same service and on the number of radio stations overall which may be commonly owned in any given market. The restrictions vary based upon the total number of radio stations in the market.[5]

4. Jacor bases its request for waiver of the one-to-a-market rule on the case-by-case waiver standard adopted by the Commission in 1989. *Amendment of Section 73.3555*, 4 FCC Rcd 1741 (*Second Report and Order*, *reconsidered in part*, 4 FCC Rcd 6489 (1989) (*Second Report and Order Recon.)*. Under this standard, we make a public interest determination on a case-by-case basis using the following five criteria: 1) the potential public service benefits of common ownership of the facilities, such as the economies of scale, cost savings and programming and service benefits; 2) the types of facilities involved; 3) the number of media outlets already owned by the applicant in the relevant market; 4) any financial difficulties involving the station(s); and 5) issues pertaining to the level of diversity and competition within the affected market. *See Second Report and Order*, 4 FCC Rcd at 1753-54.

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agreement and the ensuing changes in its waiver request related to the divestiture of WKRQ(FM), it notes that "Jacor otherwise restates its request for waiver of the rule as stated in the application."

[4] We require sales applications involving principal community contour overlaps between more than one radio station in the same service to include an exhibit showing compliance with the local radio ownership rule, 47 C.F.R. §73.3555(a). *Revision of Radio Rules and Policies*, 7 FCC Rcd 2756, 2779 n.102 (1992), *recon. granted in part and denied in part*, 7 FCC Rcd 6387 (1992).

[5] Under the local radio ownership rules, as amended by the Telecommunications Act of 1996, in a radio market with 45 or more commercial radio stations, a party may own up to eight commercial radio stations, not more than five of which are in the same service; in a market with 30 to 44 commercial radio stations, a single entity may own up to seven commercial radio stations, no more than 4 of which are in the same service; in a market with 15 to 29 stations, a party may own up to six stations, not more than four of which are in the same service; and, in markets with 14 or fewer stations, one owner may hold up to five stations, no more than three of which are in the same service, except that no one entity may control more than 50% of the stations in a market. *Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996*, FCC 96-90, released March 8, 1996; *see also* Telecommunications Act of 1996, Pub. L. No. 104-104, § 202 (b).

5. With respect to the first criterion, Jacor claims that the waivers should be granted because the proposed combinations would result in significant cost efficiencies and, consequently, in improved service to the public According to the applicant, Jacor operates with distinct sales staffs, individual station program directors and diverse program formats at its stations and thus competes with the other stations in the market, including other Jacor stations, for audience share and advertising revenue. The applicant notes, however, that it intends to centralize and consolidate many of its functions, as well as the facilities of most of its stations and to engage in joint news gathering and reporting activities. Jacor predicts that such consolidation will result in approximately $1.47 million per year in savings for stations in the Tampa combination, and $874,000 per year for those in the Cincinnati combination. Most of these savings, states the applicant, will result from the consolidation of station functions and from a reduction in staff.[6] Additionally, Jacor projects savings of over $2 million resulting from the consolidation of the home offices and home office functions of Jacor and Citicasters, at least $300,000 of which can be allocated to the three Citicasters stations in the Tampa market, and $200,000 of which can be allocated to the two Citicasters stations in the Cincinnati market.[7]

6. Not only will the combinations result in cost efficiencies, asserts Jacor, but they will also result in public service and programming benefits. It argues that news coverage by the stations involved in the waiver requests will improve as a result of an increase in news staff, cooperation between the stations' news departments, and the efficiencies of common ownership. Jacor claims that because the stations involved in the Tampa waiver request are licensed to seven different communities, common ownership will enhance the community affairs programming of the stations by allowing one station to draw upon the expertise of the other stations in ascertaining issues of importance to their entire service area. Similarly, Jacor states that the Cincinnati stations will enhance their community affairs programming by drawing upon the expertise of the other commonly owned stations. With respect to the Cincinnati combination, the applicant states that

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[6] Specifically, Jacor anticipates that joint operation of the Tampa stations will result in an estimated yearly savings of: $200,000 through joint purchasing of office supplies, Arbitron ratings, national representative fees, telephone services, computers and computer software, and similar items, as well as through merged traffic, business and engineering staffs which will reduce salary expenses; $637,000 through consolidation of the studios of WXTB(FM) and WTBT(FM) with the co-located studios of WFLA(AM), WFLZ-FM and WDUV(FM) which will result in savings in rent, utilities, supplies, equipment and the need for multiple receptionists; $170,000 through joint news gathering activities and the sharing by WTSP(TV) and Jacor's news and talk AM radio stations of some services and facilities, as well as through discounts for joint subscriptions to various news services, and the elimination of staff positions; and $160,000 through volume discounts for outdoor and other advertising.

In the Cincinnati market, Jacor anticipates that joint operations will result in annual savings of: $180,000 through joint purchasing of office supplies, Arbitron ratings, national representative fees, telephone services, computers and computer software, and similar items; $162,000 by consolidation of functions and departments through merged traffic, business and engineering staffs which will increase efficiencies and reduce salary expenses; $170,000 through joint news gathering activities and the sharing of some services and facilities by WKRC-TV and Jacor's news and talk AM radio stations, as well as through discounts for joint subscriptions to various news services, and the elimination of staff positions; and $162,000 through volume discounts for outdoor and other advertising.

[7] These calculations exclude WKRQ(FM).

the meteorological services provided to the Cincinnati area will improve as a result of common ownership since WLW(AM) provides comprehensive meteorological services to all of the Jacor stations and WKRC-TV operates a weather center, staffed with three professional meteorologists, which has won numerous awards for its weather forecasts and community service. Furthermore, the applicant maintains that the opportunities for cross promotion resulting from common ownership of the stations in both combinations will result in greater awareness of community events and outreach programs sponsored by Jacor. Finally, the applicant states that the efficiencies will allow it to increase licensee-produced public service programming on WTSP(TV), St. Petersburg, Florida and WKRC-TV, Cincinnati, Ohio. Specifically, Jacor pledges that WTSP(TV) will air an additional one-half hour of news and information programming between 6:00 and 8:30 a.m. on Sunday mornings when the WTSP-produced "Tampa Bay Life" airs, and WKRC-TV will air an additional one-half hour WKRC-produced public interest program on Saturdays between 6:00 and 6:30 a.m. which will feature current topics affecting the Cincinnati area.

7. Regarding the second criterion, Jacor asserts that the technical facilities that it owns or seeks to acquire in the Tampa market are comparable to those of other stations in the market. The applicant notes that WTSP(TV) is a VHF station, which operates on Channel 10 with 316 kW peak visual effective radiated power ("ERP") from a directional antenna with a height of 458 meters above average terrain ("HAAT"). According to Jacor, there are three other VHF stations licensed in the television metro market. With respect to the radio stations involved in the waiver requests, WFLA(AM) operates on 970 kHz with a power level of 5.0 kW both day and night using different directional antenna systems. Ten other Class III AM stations are licensed in the Tampa metro market, as are 11 Class II and two Class IV AM stations. WFLZ-FM is a Class C station which operates on 93.3 MHz with 99 kW ERP and 414 meters HAAT. In addition to WFLZ-FM, three other Class C FM stations are licensed in the television metro market. WDUV(FM) holds a construction permit for a Class C station with a maximum ERP of 99 kW, to operate on 103.5 MHz from a height of 414 meters HAAT. WXTB(FM), which operates at 97.9 MHz with 100 kW ERP and 410 meters HAAT, is one of four commercial Class C1 stations licensed in the metro market. WTBT(FM) is a Class A station operating on 105.5 MHz with a maximum ERP of 6 kW and 87 meters HAAT. Three more commercial stations are either Class C2 or Class A stations. Therefore, concludes Jacor, these facilities are comparable, or serve smaller areas than other stations in the same service in the television metro market. Jacor also notes that several other media owners serve the Tampa metro market. According to the applicant, Media General owns both WFLA-TV and the *Tampa Tribune*; Clear Channel Radio Licenses, Inc. owns two AM and two FM radio stations; Cox Broadcasting owns one AM and two FM; Paxson Broadcasting of Tampa owns three AM and one FM; and, Gannett Florida Broadcasting and Infinity Broadcasting Corporation each own one AM and one FM.

8. Similarly, regarding the technical facilities in Cincinnati, the applicant maintains that these facilities are comparable to others in the market. Specifically, Jacor notes that WKRC-TV operates on Channel 12 at 316 kW ERP from a height of 305 meters HAAT. Two other VHF stations are licensed in the Cincinnati television metro market. WLW(AM), a Class I-A clear channel station, operates at a power level of 50 kW. In addition to WLW(AM), there is one

other Class I clear channel licensed in Cincinnati. WCKY(AM) is one of three Class III AM stations licensed to the metro market. It operates at a power level of 5 kW during the day and 1 kW at night. According to the applicant, four more powerful secondary clear channel Class II AM stations are licensed to this market. Also, one Class IV AM station is licensed in the Cincinnati metro market. With respect to the FM stations, WEBN(FM), WOFX(FM), WKRQ(FM) and WWNK-FM are all Class B stations. WEBN(FM) operates on 102.7 MHz with a maximum ERP of 16.5 kW from a height of 267 meters HAAT, WOFX(FM) operates on 92.5 MHz with a maximum ERP of 16 kW from a height of 277 meters HAAT, WKRQ(FM) operates on 101.9 with a maximum ERP of 16 kW from a height of 267 meters HAAT, and WWNK-FM operates on 94.1 MHz with a maximum ERP of 32 kW from a height of 183 meters HAAT. Also licensed in the television metro market are four other commercial Class B FM stations,[8] as well as nine other commercial FM stations of lower classes. Additionally, Jacor notes that there are three noncommercial Class B FM stations, four noncommercial Class A FM stations, and one noncommercial Class C3 FM station licensed in the Cincinnati television metro market. Further, Jacor states that several other media owners serve the Cincinnati market, including Scripps Howard which owns WCPO-TV and the *Cincinnati Post*, Gannett Co. which owns WLWT(TV) and the *Cincinnati Enquirer*, Chancellor Broadcasting Corp. and Richard L. Plessinger which each own an AM and two FM radio stations, and Radio Station WPFB, Inc. and Vernon R. Baldwin Inc., which each own one AM and one FM station.

9. Third, according to their waiver requests, other than the stations involved in this case, Jacor has no attributable interest in other media outlets in the Cincinnati and Tampa metro areas. Jacor concedes that the fourth criterion, concerning financial difficulties involving the stations, does not apply to any of the Tampa or the Cincinnati stations, with the possible exception of WTBT(FM), New Port Richey, Florida which experienced a pre-tax operating loss of $400,775 in 1995. The applicant notes, however, that the Commission has previously indicated that "[n]ot all of the factors mentioned will be relevant in every case." *See Second Report and Order Recon.*, 4 FCC Rcd at 6491; *see also Great American Television and Radio Co.*, 4 FCC Rcd 6347, 6349 (1989).

10. Finally, the fifth waiver factor considers the effects of the proposed combination on diversity and competition in the relevant markets. Jacor urges that, given the nature of the Cincinnati and Tampa markets, grant of this waiver would not adversely affect either competition or diversity. The applicant notes that the Cincinnati market is the 29th largest market and, including WKRC-TV, has nine commercial and noncommercial television stations, licensed to eight separate owners. Also, according to Jacor's August 8, 1996 amendment, including the Citicasters and Jacor stations in the market, there are 10 AM and 24 FM commercial and noncommercial radio stations licensed to the Cincinnati television metro market, which will be licensed to 24 separate owners after consummation of the proposed transaction. Consequently, after this transaction, there will be a total of 31 separate broadcast voices in the Cincinnati market. There are also nine daily and 59 weekly newspapers, 58.9% cable penetration, and two

[8] One of the four stations is WKRQ.

Multipoint Multichannel Distribution Service (MMDS) operators. Regarding the economic situation in Cincinnati, according to Jacor, WKRC-TV garners a 21.5% share of the television advertising market. After grant of the requested waivers, Jacor represents that the radio stations will garner 39% of the radio advertising market,[9] and the radio-television station combination will garner 29%[10] of the combined television-radio advertising market.

11. Jacor states that the Tampa market, the 15th largest in the country, has 14 commercial and noncommercial television stations, including Citicaster's WTSP(TV), operated by 14 different owners. Including the Citicasters and Jacor stations, there are 25 AM and 19 FM radio stations licensed in the Tampa television metro market which, after consummation of this transaction, will be licensed to 32 separate owners. Thus, there will be a total of 45 separate commercial and noncommercial broadcast voices in the Tampa metro market. Additionally, the market has 7 daily and 13 weekly newspapers, 68.8% cable penetration, and four MMDS operators. Both markets, states Jacor, already do or soon will receive Direct Broadcast Satellite (DBS), Digital Audio Radio Service (DARS) and Local Multichannel Distribution Services (LMDS) services; in both markets direct mail advertisers compete for advertising dollars; and in both markets increasing use of the Internet will soon revolutionize information sources and competition. With respect to the economic situation in Tampa, Jacor states that WTSP(TV) currently garners a 20% advertising share of the television market. After grant of the requested waivers, Jacor represents that the radio combinations will garner 25% of the radio advertising share, and the radio-television station combination will garner 21% of the combined television-radio advertising market. Jacor states that "following consummation of the proposed transaction, each television and radio station under Jacor control will continue to compete with all stations . . . in the market, including other Jacor stations, for audience share and advertising dollars." The applicant concludes its requests by stating that the proposed combinations will enable it to compete in these markets and will result in substantial cost efficiencies which will benefit the public.

12. *Discussion.* We turn first to Jacor's compliance with our local radio ownership rules. Jacor has submitted data as to the aggregate number of radio stations in the various markets in which Jacor will control more than one station in the same service and has shown that, in each case, its post-merger ownership structure complies with the numerical ownership restrictions adopted in the Telecommunications Act of 1996 and incorporated in our rules. In addition, the Department of Justice has entered into an agreement with Jacor and Citicasters which requires Jacor to divest its prospective interest in WKRQ(FM), Cincinnati, but has otherwise determined not to challenge Jacor's proposed merger with Citicasters on antitrust grounds. The required divestiture of WKRQ(FM) will reduce Jacor's post-merger radio advertising share in the Cincinnati market from approximately 56.9% to 49% and thus limits the increase in Jacor's market share from the Citicasters merger to about 4.7%.

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[9] This number excludes the 6% radio share Jacor claims is received by WKRQ(FM).

[10] This number excludes the 2% radio-television combined share Jacor claims is received by WKRQ(FM).

13. Further, we note that Jacor is obliged to severely limit its use of joint sales agreements (JSAs) as a means of controlling additional advertising inventory in the Cincinnati broadcast market. First, on May 3, 1995, the Mass Media Bureau granted applications assigning WPPT(FM) (now WOFX(FM)), Cincinnati, Ohio to Jacor and WSAI(AM), Cincinnati, Ohio, to CR Acquisition, Inc., an entity controlled by Charles E. Reynolds (Reynolds).[11] In connection with these assignments, the Bureau relied upon representations by both parties that they would limit the sale of advertising time by Jacor or any Jacor affiliate on Reynolds' stations. Specifically, Jacor and Reynolds represented that neither Jacor nor any Jacor affiliate would sell any advertising inventory on stations WSAI(AM) or WAOZ(AM), or more than 30% of the available advertising inventory on WAQZ(FM), in combination with a station affiliated with Jacor. Our action today is premised on the assumption that Jacor has and will continue to comply with these limitations on its joint sales activity. Second, the settlement agreement with the Department of Justice expressly requires Jacor to notify the Department prior to entering into "any agreement or understanding that would allow Jacor to market or sell advertising time for any Non-Jacor Station" in Cincinnati.[12] Finally, we will impose in this order a condition that, with certain exceptions, prior to entering or implementing any JSA in the Cincinnati market, Jacor must seek and obtain the Commission's consent. The effect of this condition will be to require notice and consent by the Commission to any JSA activity by Jacor that would, under the terms of the settlement agreement with the Department of Justice, require notice to the Department.[13]

14. In reaching our decision in this case, we also take account of a related financing restraint imposed in the Department of Justice's settlement agreement with Jacor. Specifically, the agreement obliges Jacor to notify the Department prior to acquiring "any assets of or any interest, including any financial, security, loan, equity or management interest in, any Non-Jacor Radio Station or any person affiliated with any such Station. . . ."[14]

15. We conclude that, under the circumstances of this case and based upon the foregoing considerations, the radio combinations which Jacor will control after consummation of the proposed transaction do not pose a bar to our grant of the subject applications. We note,

[11] Letter from Roy J. Stewart, Chief, Mass Media Bureau to Jason L. Shrinsky, Esq. (May 2, 1995) (Re: File Nos. BALH-940323GE and BAL-940330EA).

[12] DOJ Settlement Agreement, Section IX.A.(2). This provision does not apply under certain limited circumstances, including cases where Jacor's right to sell another station's advertising time is "consideration for the sale by Jacor of proprietary news, weather or traffic programming to any such Non-Jacor Radio Station and would permit Jacor to sell no more than 5 percent of that station' s advertising time for any day and no more than 20 percent of that station's advertising time for any hour segment, or . . . is consideration for Jacor's granting to such station rebroadcast rights for a sports event to which Jacor has exclusive broadcast rights, and would permit Jacor to sell no more than 15 percent of such station's advertising time for any day." *Id.*

[13] *See n.27, infra* and *n.12, supra.*

[14] DOJ Settlement Agreement, as amended, Section IX.A.(1).

however, that the constraints on Jacor's conduct imposed in this order and in the Department of Justice settlement agreement are critical to this determination.

16. Our reliance on the determinations of the Department of Justice to inform our decision here should not be taken to suggest that either our jurisdiction or our obligation with respect to competition in broadcast markets is coincident with that of the Department. Rather, our interests in this area are complementary. And, in the circumstances of this case, we conclude that the Department's antitrust determination is both relevant and highly probative evidence that Jacor's acquisition of Citicasters' stations, as modified by the Department's settlement agreement, will not pose unacceptable risks to competition in the relevant broadcast markets.

17. As to Jacor's request for waiver of the one-to-a-market rule in Tampa and Cincinnati, we note, at the outset, that this is the first time the Commission has considered one-to-a-market waiver requests where the radio combinations involved were governed by the ownership standards adopted in the Telecommunications Act of 1996. *See Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996,* FCC 96-90, released March 8, 1996. Under these standards, broadcasters may now own as many as eight stations in a market, depending upon the total number of commercial stations in the market. *Id.* Issues related to radio-television combinations remain in the pending rulemaking proceeding concerning broadcast ownership, however. For this reason, we do not believe that an unconditional grant of Jacor's permanent waiver requests is appropriate. We conclude that a temporary waiver of the one-to-a-market rule pending our resolution of the one-to-a-market issues raised in the broadcast ownership rulemaking proceeding is justified and will not, given its limited duration, unduly affect competition and diversity in the relevant markets.

18. Our view that a temporary waiver is warranted is based in part upon our analysis of Jacor's five-factor showing in support of its permanent waiver request.[15] In the past, the Commission has held that significant cost savings and economic efficiencies, the first criterion we examine in our case-by-case analysis, are "precisely the type of public interest benefit from common station ownership which we envision as warranting a waiver of the one-to-a-market rule . . . ." *Great American Television and Radio Co.,* 4 FCC Rcd at 6349. Jacor has demonstrated that joint operation of the Cincinnati and Tampa stations will create efficiencies resulting in cost savings and the potential for enhanced programming and service benefits. Specifically, the applicant has shown that combined operation of the Cincinnati and Tampa stations will result in a projected cost savings of at least $874,000 and $1.47 million annually, respectively, with most of these savings resulting from the consolidation of station functions and from a reduction in staff. Additionally, Jacor projects savings of over $2 million resulting from the consolidation of the home offices of Jacor and Citicasters. The applicant states these cost savings will translate into public service and programming benefits in the form of improved news coverage and enhanced community affairs programming by the stations involved in the waiver requests. Jacor

[15] We express no view on the adequacy of Jacor's showing to support a permanent waiver of the one-to-a-market rule.

notes that benefits such as improved news and weather coverage which resulted from joint control by Citicasters of WKRC-TV, WKRQ(FM) and WWNK-FM in Cincinnati, *see Secret Communications Limited Partnership,* 10 FCC Rcd 6874, 6879 (1995), and WTSP(TV), WXTB(FM) and WTBT(FM) in the Tampa area, *see Alta Gulf FM, Inc.,* 10 FCC Rcd 7750, 7750 (1995), will now also benefit the Jacor stations. Additionally, Jacor will use the cost savings resulting from these efficiencies to air an additional one-half hour of news and informational programming between 6:00 and 8:30 am on Sunday mornings on WTSP(TV), St. Petersburg and one-half hour of public interest programming between 6:00 and 6:30 a.m. on Saturday mornings on WKRC-TV, Cincinnati.

19. Regarding the second factor in our analysis, the types of facilities involved in the waiver request, in developing our case-by-case test in the *Second Report and Order* we stated that "we will consider such factors as whether the proposed radio-TV combination involves a UHF or VHF TV station or an AM or FM radio station, as well as the size or the class of the stations involved. 4 FCC Rcd at 1753. Both the Tampa and Cincinnati television stations involved in the waiver requests are maximum facility VHF stations. With respect to the radio stations, in Tampa Jacor would own one maximum power Class B[16] AM station (WFLA(AM)), three maximum power Class C FM stations (WXTB(FM), WDUV(FM) and WFLZ(FM)), the most powerful class of FM stations, and one maximum power Class A FM station (WTBT(FM)), the least powerful class of commercial FM stations.[17] In Cincinnati, Jacor would own one Class A clear channel AM station (WLW(AM)). Class A clear channel AM stations are the most powerful class of AM stations, and generally have service areas beyond those of any other AM or FM radio facility. For example, the signal of WLW(AM) will reach a radius of approximately 250 miles during the day and approximately 700 miles at night. Additionally, in the Cincinnati market Jacor would own a maximum power Class B AM station (WCKY(AM)), as well as three maximum facility Class B FM stations (WEBN(FM), WOFX(FM), and WWNK-FM), the most powerful class of FM stations licensed in Zone I, the geographic designation that includes Cincinnati, Ohio, as well as a large portion of the midwestern and northeastern United States. 47 C.F.R. §73.205.

20. With respect to the third factor, Jacor affirms that it does not own any other media outlets in either the Cincinnati or Tampa markets other than those involved in these waiver requests. Fourth, regarding the economic status of the stations involved in the combinations, except for WTBT(FM), New Port Richey, Florida, which experienced a pre-tax operating loss of $400,775 in 1995, none of the stations involved in the waiver requests are experiencing financial

[16] In 1991, the Commission reclassified AM stations from Class I, II, III or IV to Class A, B, or Cs. *Review of the Technical Assignment Criteria for the AM Broadcast Service* in MM Docket No. 87-267, 6 FCC Rcd 6273, 6279-82 (1991); *see also* 47 C.F.R. §73.21. We will therefore refer to the AM stations involved in these waiver requests using their current, letter classifications, rather than the Roman numeral classifications used by the applicant.

[17] Citicasters applied for Commission consent to slightly modify the facilities of WTBT(FM) in 1994. BPH-940428ID. On July 12, 1996, it submitted an amendment to that application requesting, *inter alia,* reclassification of this station as a Class C1 station, and permission to increase power from 6 kW to 46 kW. That application remains pending.

difficulties. As Jacor has noted, "[n]ot all of the factors mentioned will be relevant in every case." *See Second Report and Order Recon.*, 4 FCC Rcd at 6491. Accordingly, the absence of financial difficulties has not precluded waiver of the one-to-a-market rule. *See, e.g., Alta Gulf FM, Inc.*, 10 FCC Rcd 7750, 7751 (1995); *Great American Television and Radio Co.*, 4 FCC Rcd at 6349.

21. Finally, the last factor relates to the level of diversity and competition in the relevant market.[18] Indicia of the level of diversity include the number of broadcast outlets, the number of separately-owned and operated "voices" in the market, and the presence of cable and non-broadcast media. With respect to the level of diversity in the affected markets, the Tampa-St. Petersburg-Sarasota DMA is ranked 15th in the country and, according to our independent analysis, the market has 58 broadcast voices, consisting of 25 AM and 19 FM radio stations (including seven noncommercial stations), and 14 television stations (including two noncommercial stations), 45 of which are separately owned after consummation of the proposed transaction. The Cincinnati market is the 29th largest market, and has four other commercial television stations in addition to WKRC-TV, and four noncommercial stations, licensed to eight separate owners. Also licensed to the Cincinnati television metro market are 10 AM and 24 FM radio stations (including eight noncommercial stations), which will be licensed to 24 separate radio owners after consummation of the proposed transaction. Consequently, our analysis confirms that after this transaction a total of 31 separate broadcast voices, including both commercial and noncommercial stations, will be licensed to the Cincinnati market. Additionally, both markets have substantial cable penetration rates,[19] and numerous daily and weekly newspapers serve both markets, as well as MMDS.

22. With respect to economic concentration and competition in the affected markets, our independent economic analysis indicates that Jacor will have a substantial share of the radio and television advertising revenue in both of these markets. In the Cincinnati market, Jacor's radio stations currently garner a 44.33% share of the radio advertising revenue. With the addition of the Citicasters station, Jacor would have a 49.01% share of the radio advertising revenue.[20] This includes the 23.4% share received by clear channel WLW(AM) and a 10.96% share received by WEBN(FM), the first and second highest advertising shares in the radio market. WKRC-TV garners 21.54% of the television advertising revenue.[21] Together the television and radio stations

[18] The relevant market for television is the DMA, *see Media Communications Partners, L.P.*, 10 FCC Rcd 8116, 8116-17 n.13 (1995) and for radio, the television metro market. *See Second Report and Order*, 4 FCC Rcd at 1760, n.101.

[19] In its showing Jacor did not indicate cable subscribership for these areas.

[20] This figure excludes the 7.88% share we assign to WKRQ(FM).

[21] These numbers differ from those presented by Jacor. Both Jacor and the staff used BIA Publications, Inc., MasterAccess Radio Analyzer database to ascertain advertising billings for the Cincinnati market. Using the information from the database, the staff calculated the radio advertising share by dividing the estimated 1995 revenue for each station by the estimated 1995 gross market revenue for the Cincinnati and Tampa-St. Petersburg-Clearwater

receive a combined television and radio advertising share of 32.03%. In Tampa, Jacor radio stations presently receive 15.94% of the radio advertising revenue. With the addition of the Citicasters' stations, Jacor would garner 26.13% of the radio advertising market. This percentage includes WXTB(FM), which garners 8.99% of the radio advertising share, the third highest in that market, and WFLA(AM) and WFLZ-FM, both of which garner a 6.89% radio advertising share, the sixth highest share in the Tampa-St. Petersburg-Clearwater market. In the Tampa market Jacor will therefore have a 21.26% combined advertising share for radio and television.

23. We conclude, based on the record, that for purposes of granting a temporary waiver, the determination by the Department of Justice not to challenge the Jacor-Citicasters merger on antitrust grounds,[22] the conditions we impose in this order with respect to JSAs in the Cincinnati market, and Jacor's representation that it will maintain distinct, competitive sales staffs at its commonly owned stations in Cincinnati and Tampa,[23] adequately assure us that a short-term waiver will not unduly affect competition in the relevant markets.[24] As to diversity, we do not believe that diversity in Cincinnati and Tampa will be so adversely affected in the short run as to require denial of Jacor's temporary waiver request. As Jacor's showing suggests and our own analysis confirms, more than 30 independent broadcast voices will remain in Cincinnati and Tampa after the proposed merger. And, while Jacor's commonly owned facilities in these markets will be significant in technical terms, comparable competing facilities exist in both

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Arbitron radio markets, as defined by the database. The BIA Publications, Inc., MasterAccess Radio Analyzer database includes in its calculation of estimated 1995 gross market revenue the estimated media billings for radio stations licensed to communities in the Cincinnati Arbitron market, which is $81,200,000, and those in the Tampa-St. Petersburg-Clearwater Arbitron market, which is $83,400,000. While Jacor used the database to obtain the relevant advertising billing information for each station, rather than use the database to calculate advertising revenue based on stations *licensed to communities* in Cincinnati, the applicant used the billing information to do its own advertising share calculations of gross market revenue based on billings for all radio stations with *ratings* in the Cincinnati Arbitron market, which is $103,200,000, and in the Tampa-St. Petersburg-Clearwater market, which is $86,850,000. In discussing the economic issues related to these waiver requests, we will use the estimated 1995 gross market revenue figures for radio stations *licensed to communities* in the Cincinnati Arbitron radio market. As we have stated in similar contexts in the past, we believe that relying on data sources regularly used in the radio industry is a valid method of gathering such market information. *See, e.g., Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841, 5872 (1996) (using stations licensed to communities in Arbitron's Los Angeles television market to ascertain share of advertising revenue received by KCAL-TV); *see also Revision of Radio Rules and Policies* in MM Docket No. 91-140, 7 FCC Rcd 2755 (1992).

[22] As we have noted, this determination assumes, as we do, that Jacor will comply with the terms of its agreement with the Department of Justice to divest its interest in WKRQ(FM).

[23] Specifically, Jacor has stated that after consummation of the instant transaction it intends to continue operating each of its Cincinnati stations involved in the waiver requests with distinct sales staffs and that these stations "will continue to compete with all other broadcast stations . . . in the market, including other Jacor stations, for audience share and advertising dollar." File Nos. BTC, BTCH, BTCCT-960222IA through 960222IV, Ex. C (Amendment dated March 22, 1996 at 5). Jacor made similar representations with respect to its Tampa stations. *See id.* at 1.

[24] As to our reliance on the determinations of the Department of Justice, see paragraph 16, *supra*.

markets. There are, moreover, economic efficiencies and program service benefits to be gained by the merger that support the grant of a temporary waiver. Accordingly, we will grant Jacor's alternative request and approve Jacor's temporary waivers subject to the outcome of that proceeding. In keeping with recent precedent on the length of the temporary waivers, however, we will only grant Jacor a six-month waiver of the one-to-a-market rule from the issuance of an Order in our pending rulemaking proceeding. *See, e.g., Broad Street Television, L.P.*, FCC 96-106, released March 12, 1996; *see also Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841 (1996).[25]

CONCLUSION

24. For the reasons stated above, we conclude that grants of Jacor's request for temporary waivers fot six months from the issuance of an Order in our pending broadcast ownership rulemaking proceeding *(Further Notice of Proposed Rulemaking* in MM Docket Nos. 91-221 and 87-8) is warranted. Additionally, we find the applicants are fully qualified and that grant of the proposed transfer would serve the public interest, convenience, and necessity.[26]

25. Accordingly, IT IS ORDERED that the request for waiver of the Commission's one-to-a-market rule, Section 73.3555(c), to permit common ownership of stations WTSP(TV) St. Petersburg, and WFLA(AM) Tampa, WFLZ-FM Tampa, WDUV(FM) Bradenton, WXTB(FM) Clearwater, and WTBT(FM) New Port Richey, in the Tampa-St. Petersburg-Sarasota, Florida market, and of stations WKRC-TV, WLW(AM), WCKY(AM), WEBN(FM), WOFX(FM), and WWNK-FM, in the Cincinnati, Ohio market, IS GRANTED subject to the outcome in the pending broadcast ownership rulemaking, *(Further Notice of Proposed Rulemaking* in MM Docket Nos. 91-221 and 87-8), concerning these issues. Should divestiture be required as a result of that proceeding, Jacor Communications, Inc. is directed to file an application for Commission consent to sell the necessary stations within six months from the release of an Order.

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[25] For the same reason, we will only grant Jacor a six-month waiver in which to divest of WKRQ(FM).

[26] License renewal applications for the Ohio stations are currently pending. File Nos. BRH-960531U3, W4, X4, X7, X9, BR-960531W3, X8. Generally, when license renewals and transfer applications involving the same broadcast stations are both pending, the Commission refrains from acting on the transfer applications until after it has taken action on the renewals. Where a transfer application overlaps with the renewal period of stations involved in a multiple-station transfer, however, we will act upon the transfer in the normal course "so long as there remain no basic qualifications issues against the transferor and transferee that cannot be resolved in acting on the transfer and so long as both the transferor and transferee indicate in the record their express willingness to abide by such a procedure." *Capital Cities/ABC, Inc.*, 11 FCC Rcd at 5900-01 (citations omitted). In a June 3, 1996 amendment to its application, both Jacor and Citicasters give their consent to the substitution of Jacor in the place of Citicasters in connection with any renewal applications filed by Citicasters regarding the stations licensed to Citicasters and associated auxiliaries. Based on the express willingness of both Jacor and Citicasters to assume the consequences associated with succeeding to the place of Citicasters, we will grant Citicasters leave to amend its renewal applications for these stations to substitute Jacor as the applicant. This procedure is consistent with the Commission's policy, recently reiterated in *Stockholders of CBS Inc.*, that it will defer transfer applications in these circumstances "only where issues of basic qualifications remained unresolved by the Commission." 11 FCC Rcd at 3747-50 (citing *Pinelands, Inc.*, 7 FCC Rcd 6058, 6061 n.11 (1992)).

26. IT IS FURTHER ORDERED that the request for a temporary waiver of the one-to-a-market rule to permit common ownership of station WKRQ(FM), and stations WKRC-TV, and WLW(AM), WCKY(AM), WEBN(FM), WOFX(FM), WKRQ(FM), WWNK-FM in the Cincinnati market, IS GRANTED, but within six months of the consummation of the instant transaction, Jacor Communications, Inc. is directed to file an application for Commission consent to assign the license of WKRQ(FM).

27. IT IS FURTHER ORDERED that the applications for consent to the transfer of control of the Citicasters broadcast stations, BTC, BTCH, BTCCT 960222IA through 960222IV to Jacor Communications, Inc., ARE GRANTED upon the condition that prior to entering or implementing any agreement or understanding that would allow Jacor Communication, Inc. to market or sell advertising time for a Non-Jacor Radio station in the Cincinnati market, Jacor Communications, Inc. seek and obtain the Commission's consent to such an arrangement.[27]

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[27] This requirement that Jacor seek and obtain Commission consent excludes cases where Jacor's right to sell another station's advertising time is either (1) consideration for the sale by Jacor of proprietary news, weather or traffic programming to any Non-Jacor Radio Station and would permit Jacor to sell no more than 5 percent of that station's advertising time for any day and no more than 20 percent of that station's advertising time for any hour segment, or (2) consideration for Jacor's granting to a Non-Jacor station rebroadcast rights for a sports event to which Jacor has exclusive broadcast rights and would permit Jacor to sell no more than 15 percent of such station's advertising time for any day. These exceptions are intended to exactly parallel those provided in the settlement agreement between the Department of Justice and Jacor concerning notice to the Department should Jacor seek to sell the advertising time of a Non-Jacor radio station in Cincinnati. *See* DOJ Settlement Agreement, Section IX.A.(2).

SEPARATE STATEMENT
OF
COMMISSIONER SUSAN NESS

RE: *Shareholders of Citicasters, Inc. and Jacor Communications, Inc.*

It is with some misgiving that I vote today to approve the transfer of control of Citicasters Co. to Jacor Communications. The transaction would increase Jacor's concentration in the radio advertising market and add a VHF television station to the lineup.

Because of Jacor's dominant position in the Cincinnati market, the Department of Justice chose to review this transaction for compliance with the antitrust laws. In a settlement with the Department of Justice, Jacor is required to divest WKRQ(FM) within six months, at which time it is expected that Jacor's share of the Cincinnati radio advertising market will drop to just below 50 percent. To my knowledge, no other group owner has acquired such a high level of concentration in a radio market of this size or larger.

Such market power is of concern for two reasons. First, there is a point at which would-be competitors shy away from a market due to overconcentration. Secondly, control or influence over so many strong broadcast facilities can lead to market distortions and a diminution of independent voices, potentially undermining diversity of programming. Big is not necessarily bad. However, the public is not well served if market power is coupled with anti-competitive behavior.

Thus, I am troubled by Jacor's efforts to secure even greater market power by agreeing to finance a competitor's purchase of a non-Jacor station in Cincinnati. Jacor entered into this transaction while its settlement with the Department of Justice was pending, apparently without informing the Department.

In the proposed consent decree filed with the United States District Court for the Southern District of Ohio on August 5, 1996, Jacor had expressly agreed, among other things, to provide advance notification to the Department of Justice before acquiring any assets of or equity in any non-Jacor station in the Cincinnati market. Jacor has now advised the Justice Department that it will no longer finance that acquisition and has agreed to modifications to the proposed consent decree.

Jacor also has non-ownership relationships with three other Cincinnati radio stations controlled by Charles E. Reynolds. In approving a prior transaction, the Commission accepted representations by Jacor that limit the joint sales of advertising time on those facilities. Those restrictions will continue to apply.

The FCC order today requires Jacor to seek prior Commission approval of any agreements or understandings that would allow Jacor to market or sell advertising time for any non-Jacor station in Cincinnati, with certain limited exceptions. Under these circumstances, I approve this transaction.

STATEMENT OF

COMMISSIONER RACHELLE B. CHONG

DISSENTING IN PART

Re: Shareholders of Citicasters, Inc., File Nos. BTC, BTCH, BTCCT -- 960222IA through 960222IV

I respectfully dissent from the Commission's decision today insofar as it imposes a requirement on Jacor Communications, Inc., that it must seek and obtain Commission approval of any Joint Sales Agreement it may enter into in the Cincinnati market. To my mind, such a condition is unnecessary in light of the substantial oversight of this transaction by the Department of Justice. As we note in this decision, Jacor is specifically required to notify DOJ of any joint marketing agreement in the Cincinnati market. Presumably, if DOJ feels that any such agreement would create anti-competitive effects, it would take appropriate action. I see no reason for the Commission to duplicate these efforts.

In my view, such over-regulation is contrary to the intent of Congress. In enacting the Telecommunications Act of 1996, Congress clearly instructed the FCC to loosen its regulatory grip on radio transactions in markets with a substantial number of radio voices.[1] Jacor's radio station ownership fully complies with the numerical criteria established by Congress. I see nothing in the circumstances of this case that should compel us to stray from the straightforward review intended by Congress and impose an additional layer of unnecessary regulation. Accordingly, I respectfully dissent from this portion of the item.

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[1] See Section 202(b) of the Telecommunications Act of 1996, directing the FCC to revise its regulations to provide that a party may own, operate or control up to 8 commercial radio stations in a single market, depending upon the size of the market. See also, Section 202(h) which requires the FCC to review its broadcast ownership rules biennially and repeal or modify any regulation it determines is no longer in the public interest.